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contractors; and when the effect is to assume a control over property not authorized by the relation of creditor and debtor under the agreement, it is a direct appropriation, to the use of the carrier, and he must answer for his unauthorized act to the owner of the goods. The remedy may be trover or replevin, at his option, as the evidence will sustain either form of action.

This view of the case disposes of the points taken by the defendant's counsel, as to the necessity of an actual tender, and the many cases quoted in the argument, can have no application to the case.

We hold, under the circumstances, that no tender was necessary; and if there had been, it was waived, and rendered unnecessary by the conduct of the defendant.

The motion for a new trial must be overruled.

*A. S. Sullivan*, for plaintiff. *Todd*, for defendant.



## RECENT ENGLISH DECISION.

### GURNEY AND OTHERS vs. WOMERSLEY AND OTHERS.<sup>1</sup>

1. The vendor of a bill of exchange, though not a party to the bill, is responsible for the genuineness of the instrument; and if the name of one of the parties is a forgery, and the bill becomes valueless, the vendee is entitled to recover the price.
2. The defendants, who were bill brokers, having received from A. a bill of exchange drawn and endorsed by him, for the purpose of being discounted took it to the plaintiffs, who were money lenders, with whom the defendants had previously had dealings: they declined to endorse or guarantee it, and the plaintiffs, upon the credit of the acceptance, discounted it. There were separate notes between A. and the defendants, and the defendants and the plaintiffs; and the rate of discount charged by the defendants to A. was higher than that charged by the plaintiffs to the defendants. The acceptance was forged by A., and the bill was valueless. *Held*, that the defendants having been found by the jury to have dealt with the bill as principals, the plaintiffs were entitled to recover the sum paid to the defendants upon the discount of the bill.

<sup>1</sup> 19 Jurist, 328. Court of Queen's Bench.

*Nov. 4, 1854.*—Action for money had and received. Plea, never indebted. On the trial, before Lord Campbell, C. J., at the Sittings at Guildhall after Trinity Term, 1854, it appeared that the plaintiffs, who were money lenders, and the defendants, who were bill brokers or discount agents, had extensive dealings together, in the course of which the plaintiffs had frequently discounted bills for the defendants, which were drawn and endorsed in the name of Anderson. Some of these bills the defendants endorsed or guaranteed, and others were discounted without such endorsement or guaranty. On the occasion of one of the bills, endorsed by Anderson, which was for £3000, and purported to be accepted by Van Notten & Co., being brought to the plaintiffs for discount, the defendants were asked by the plaintiffs to endorse or guarantee it, but they declined, and the plaintiffs discounted it, without such endorsement or guaranty, upon the faith of the acceptance of Van Notten & Co. This acceptance turned out to have been forged by Anderson, who became bankrupt, and was subsequently convicted of the offence. The only genuine name upon the bill was that of Anderson, and the bill proved worthless. The mode of dealing was, that separate notes passed between the plaintiffs and the defendants, and between the defendants and Anderson, and a different rate of discount was charged, the plaintiffs charging the defendants £5 per cent., and the defendants charging Anderson £6 per cent. for discount, and 10s. per cent. agency commission. The Lord Chief Justice left to the jury the question whether the defendants had dealt with the bill as principals, or only as agents for Anderson, and directed them that in the former case the defendants were liable to refund the amount received on the discount of the bill, as upon a failure of consideration. The jury found a verdict for the plaintiffs for £3000. In the following Michaelmas Term, (Nov. 4),

*Bramwell* moved for a rule nisi for a new trial, on the grounds of misdirection and of the verdict being against the evidence.

COLERIDGE, J.—I am of opinion that there should be no rule on either ground.

As to the verdict being against the evidence, the distinction pointed out between the dealings with the bills endorsed or guaran-

teed by the defendants and those which they did not endorse or guarantee, has reference to the solvency of the parties, and not to the genuineness of the instrument. There was clearly enough evidence to show that the defendants meant to make themselves liable as principals in this transaction.

The alleged misdirection raises the question as to the extent of responsibility which in such transactions the vendor of a bill takes upon himself. This case seems to me to fall within the same principle as the case of a bar of brass sold as a bar of gold, which was put by Lord Campbell, C. J., in *Gompertz vs. Bartlett*, (2 El. & Bl. 847, 854; 18 Jur. 266, 267), and the other cases there cited. When a person asks another, "Will you discount this bill?" which appears on the face of it to be drawn, accepted, and endorsed by certain persons, he represents it to be a bill drawn, accepted, and endorsed by those persons; and if it is not, the consideration fails.

WIGHTMAN, J.—As to the first point, it appears to me that there was quite enough evidence to warrant the jury in coming to the conclusion that the defendants acted as principals in the transaction.

As to the alleged misdirection, it is said that the plaintiffs had all that the defendants purported to sell, and that there was no guaranty. But it seems to me that there was a guaranty that the bill which the defendants professed to sell was a genuine instrument. I cannot distinguish this case from the case of the sale of the Guatemala bonds, (*Young vs. Cole*, 3 Bing. N. C. 724,) and the Navy bills, (5 Taunt. 488.) Much depends upon the terms and the language used at the time of the transaction. In this case the bill proves to be very different from the bill which the defendants professed to sell; and therefore there was a failure of consideration.

My brother Erle, who has gone to chambers, authorized me to say that he is of the same opinion on both points.

LORD CAMPBELL, C. J.—First, where a person employs a broker to discount a bill, and the bill broker goes to a capitalist or money dealer and procures him to discount it, the transaction is between

the bill broker and the money lender, not between the owner of the bill and the money lender. The contracts are separate. There is one contract between the bill broker and money lender, and another contract between the bill broker and the owner of the bill, and there are distinct rates of discount. The defendants dealt as principals, and are responsible for the genuineness of the bill.

Secondly, though the defendants, having declined to endorse and guarantee the bill, are not liable for the solvency of the parties to the bill, they are liable for the genuineness of the instrument, and for its being what it purported to be. Here, that which purported to be an acceptance of Van Notten & Co., on the credit of which the defendants asked that the bill should be discounted, was a forgery, and the bill was of no value. Therefore there was a failure of consideration, and the plaintiffs are entitled to recover in this action.

Rule refused.

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## LEGAL MISCELLANY.

### LEGAL PRINCIPLES.

#### No. VI.

We read in our law books, as in our Latin grammars, of rules and their exceptions. Now we may possibly make a distinction between a rule and a principle of the law; but if we do, and consider rules as specific developments of principles, we shall find our rules of little service, because we shall be obliged constantly to look back to the developing principle to learn their extent and force. And such rules must always be encumbered with exceptions so numerous and difficult to be understood, that we may well doubt the propriety of ever recognizing their existence in the law.

But most clearly a legal principle is not ordinarily a thing with exceptions. Usually, like a principle of natural law, it works uniformly and harmoniously. Yet every legal question is not influenced by every legal principle, just as the falling of a feather in an